LOUIS B. ELLSWORTH, JR.

IBLA 77-406 Decided November 22, 1977

Appeal from decisions of the Arizona State Office, Bureau of Land Management, declaring null and void for failure to pay rental timely various mining claims located on the Papago Indian Reservation (Contest Nos. A-9963, 9965, 9966, 9967).

Affirmed.

1. Accounts: Payments -- Act of June 18, 1934 -- Indian Lands: Generally -- Mining Claims: Special Acts

   The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

2. Act of June 18, 1934 -- Administrative Procedure: Hearings -- Mining Claims: Hearings -- Rules of Practice: Appeals: Hearings

   When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

APPEARANCES: Nick Rayes, Esq., of Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Louis B. Ellsworth, Jr., appeals from decisions dated May 12, and May 13, 1977, of the Arizona State Office, Bureau of Land Management (BLM), declaring the following mining claims null and void for failure to pay rental fees timely: Black Jack and Black Jack #1, located on February 2, 1954 (Contest No. A-9963); Black Widow and Black Widow #1, located on November 18, 1954 (Contest No. A-9965); Blue Joker, located on December 30, 1954 (Contest No. A-9966); Blue Jester, located on December 7, 1954 (Contest No. A-9967). 1/ The mining claims are all within the Papago Indian Reservation. The rental for each claim was due on or before the anniversary of the date the claim was located. 43 CFR 3825.1(b). Appellant has not paid the rental for the lease years beginning in 1976.

In his Statement of Reasons, appellant explains that he made a lump sum rental payment for the years 1959 to 1974. He stated the Bureau of Indian Affairs (BIA) informed him in 1975 when he made the annual payment, that it would only accept annual payments thereafter, and that he would receive notices of rental due. He asserts that BIA did not send him the rental notices and he forgot to make the payments. He requests relief based on the interpretation that the rental requirement in 43 CFR 3825.1(b) is directory, not mandatory, as expressed in Charles Ketchum, 16 IBLA 82 (1974). Appellant also requests that a hearing be ordered.

The Papago Indian Reservation was reopened to mining claim locations by section 3 of the Act of June 18, 1934, 48 Stat. 984. Section 3 also established a maximum yearly rental of 5 cents per acre for land used in mining operations. On November 13, 1937, the Department issued regulations setting the rental at 5 cents per acre and requiring payments "each year on or prior to the anniversary date of the mining location." 43 CFR 185.37 (1938), now codified as 43 CFR 3825.1(b). The regulation also states: "Failure to make the required annual rental payment in advance each year * * * shall be deemed sufficient grounds for invalidating the claim." id. The Papago Indian Reservation was withdrawn from the operation of the mining laws, subject to valid existing rights, by the Act of May 27, 1955, 69 Stat. 67.

1/ BLM indicates that Harry S. Ruppluis owns a one-half interest in these mining claims except for the Black Jack and Black Jack #1. However, decisions sent to him were returned marked "deceased." At this time, therefore, any successors-in-interest have not been notified of the BLM action.

[1] Appellant correctly argues that the above-quoted provision of 43 CFR 3825.1(b) regarding failure to pay annual rental timely is directory and not mandatory. Charles Ketchum, supra; I. M. Clausen, 7 IBLA 286 (1972); Mrs. Frances S. Warner, A-28265 (June 2, 1960). However, the cited decisions have established a framework within which this directory provision is to be applied.

In Warner, the rental payment was mailed prior to the due date but arrived late. Thereafter, BLM issued a decision declaring the mining claims null and void. The Deputy Solicitor reversed BLM because BIA had accepted prior late rental payments for the mining claims and because the payment was only a few days late.

In Clausen, the rental payment was 3 months late and was filed after BIA had requested BLM to declare the claims null and void. The Board affirmed the BLM decision because of the lateness of the payment, because BLM had initiated action against the claims prior to payment, and because no sufficient explanation for the late payment was given by the appellant. The Board specifically rejected as a sufficient explanation prior late payments which had been accepted by BIA.

Finally, in Ketchum, the case relied on by appellant here, the Board reversed a BLM decision holding mining claims invalid where the rental payment arrived at BLM 9 days after it was due. As reasons for reversal, the Board stated at 85: "The present situation is distinguishable from Clausen, in that payment here was tendered within a few days after the due date and before any action had been initiated to declare the claims null and void for failure to pay the rental due."

To summarize, mining claims need not be invalidated where rental payments are late if they are received within a few days of the due date. However, the later the payment is, the more the Board will require as explanation for the lateness, particularly if BLM initiates action against the claims prior to payment.

Here, appellant had missed both the 1976 and 1977 rental payments when BLM issued its decision for the Black Jack and Black Jack #1 mining claims. He was 1-1/2 years late for the other mining claims. BLM had not only initiated action against his claims, it had completed the action and issued decisions. It is the mining claimant's responsibility to pay the appropriate rental when it is due and the failure of BIA to notify him will not excuse the long period of time without payment involved here. Cf. Louis J. Patla, 10 IBLA 127 (1973) (failure to receive courtesy notice of rental due on an oil and gas lease will not justify late payment of rental). For these reasons, we affirm the decisions of the BLM State Office.

[2] With regard to appellant's request for a hearing on this matter, we must deny this also. In order to determine whether a discovery of a valuable mineral deposit has been made on an unpatented mining claim, or to determine other factual issues related to mining claims, a hearing before an administrative law judge will be held. However, where there are no issues of fact involved, but only of law, as here, a hearing is not required. Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); W. A. Todd, 28 IBLA 180 (1976). Since appellant has not disputed the fact of nonpayment of the rentals nor suggested what additional information might be forthcoming at a hearing, we find no useful purpose in ordering one under 43 CFR 4.415.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Martin Ritvo
Administrative Judge